



To: Vice Mayor Michael Mena

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

RE: Legal Opinion Regarding Rfq Holdings, LLC's purchase of City-owned Property at 350 Greco Avenue and Vice Mayor Mena's ability to Vote.

Date: May 12, 2021

On May 11, 2021, an ordinance (on first reading) was on the City Commission agenda to authorize the City to enter into a Purchase and Sale Agreement with JRFQ Holdings, LLC ("JRFQ") for the purchase of the City-owned surface parking lot (#31) at 350 Greco Avenue. On May 10th, Vice Mayor Michael Mena requested that I advise him on whether he would be permitted to vote on said ordinance and I provided the Vice Mayor with a verbal opinion.¹ This written opinion memorializes the factual information provided by the Vice Mayor and the verbal opinion that was provided by me to him, based on that information.

Vice Mayor Mena is employed by MSP Recovery Law Firm which has approximately 35 employees. Vice Mayor Mena has no ownership interest in MSP Recovery Law Firm. Likewise, Vice Mayor Mena owns no stock in MSP Recovery Law Firm. JRFQ is a separate entity with no corporate relationship to MSP Recovery Law Firm. Vice Mayor Mena has no relationship with or to JRFQ.

This opinion addresses whether Vice Mayor Mena is permitted to vote on the ordinance authorizing the purchase and sale agreement.

Applicable Law and Analysis:

Miami-Dade County Ethics Code:

The Miami-Dade Ethics Ordinance speaks to voting conflicts in the second paragraph of Sec. 2-11.1(d) which states in pertinent part:

¹ At the May 11th City Commission meeting, the Vice Mayor stated that he asked for an opinion regarding whether he was permitted to vote on the item, was advised that he could, and proceeded accordingly.

No [Commissioner] shall vote on or participate in any way in any matter presented to the [City Commission] if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the [City Commission]: (i) officer, director, partner, of counsel, consultant, *employee*, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, *if* in any transaction or matter would affect [the Commissioner] in a manner distinct from the manner in which it would affect the public generally. Any [City Commissioner] who has any of the above relationships or who would or might directly or indirectly profit or be enhanced by the action of the [City Commissioners] shall absent himself or herself from the Commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter.

Vice Mayor Mena is employed as an attorney with MSP Recovery Law Firm. MSP Recovery Law Firm has no relationship to JRFQ. Accordingly, the Vice Mayor does not have any of the enumerated relationships with the entity that is affected by the Commission's action -- JFRQ. (See RQO 10-20, 07-54; *compare* RQO 15-04, 07-15). In addition, for the same reasons above, Vice Mayor Mena would not "directly or indirectly profit or be enhanced by" the action of the City Commission on this item. The benefit to JRFQ does not benefit MSP Recovery Law Firm or the Vice Mayor. Accordingly, Vice Mayor Mena does not have a voting conflict under subsection (d)(i).

The Miami-Dade Ethics Ordinance also speaks to voting conflicts in Sec. 2-11.1(n) which states in pertinent part:

No [Commissioner] shall participate in any official action directly or indirectly affecting a business in which he or a member of his immediate family has a financial interest. A financial interest is defined as a special financial interest, direct or indirect, as the term is used in Section 4.03 of the County's Charter; or as a financial interest as defined in Section 769 of the Restatement of the Law of Torts as in investment or something in the nature of an investment.

The corresponding section in the Coral Gables Ethics Code is Sec. 2-296, which states in pertinent part:

No [Commissioner] shall participate in any official action directly or indirectly affecting a business in which that person or any member of the immediate family has a financial interest. A financial interest is defined in this subsection to include, but not be limited to, any direct or indirect interest in any investment, equity, or debt.

Vice Mayor Mena has no "financial interest" in JRFQ, as defined in either section. Accordingly, he does not have a voting conflict under subsection(n) or Sec. 2-296.

State of Florida Ethics Code:

The corresponding state law provision (Sec. 112.3143, F.S.) relating to voting conflict states, in pertinent part, as follows:

No...municipal...officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency defined in s. 112. 312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer.

A “special private gain or loss” means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer, his or her relative, business associate, or principal receive a greater benefit or harm when compared to other members of the class.

Sec. 112.3143(1)(d), F.S.

“Principal by whom retained” means an individual or entity, other than an agency as defined in s. 112.312(2), that for compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one’s client, employer, subsidiary, or sibling organization of one’s client. Sec. 112.3143(1)(a), F.S.

“Business associate” means any person or entity engaged in or carrying a business enterprise with a public officer, public employee, or candidate as a partner, joint venturer, corporate shareholder where the shares of such corporate are not listed on any national or regional stock exchange, or co-owner of property. Sec. 112.312(4), F.S.

Vice Mayor Mena’s vote would not inure to his “special private gain or loss,” the “special private gain or loss” of the corporate principal by which he is retained (MSP Recovery Law Firm), or the “special private gain or loss” of a “business associate.” As stated above, the Vice Mayor has no relationship to JRFQ. In addition, he is not a “business associate” of the principle(s) that the corporations may hold in common as he is not a corporate shareholder in MSP Recovery Law Firm.

In CEO 14-14, the Florida Ethics Commission held that where a councilperson and the owner of a company, both of whom own stock in the bank's holding company (and the stock was not listed on a national or regional stock exchange), the councilperson and the owner were "business associates" requiring the counsel person's recusal. The determining factor in that opinion was that the individuals were "business associates" under the definition in 112.312(4), F.S.; that is not the case here.

In conclusion, Vice Mayor Mena does not have a voting conflict with regard to the ordinance authorizing the City to enter into a Purchase and Sale Agreement with JRFQ for the purchase of the City-owned surface parking lot (#31) at 350 Greco Avenue.

In consultation with special ethics counsel, this opinion is issued pursuant to Sections 2-252(e)(1) and (8) of the City Code and Section 2-300 of the City's Ethics Code authorizing the City Attorney's Office to issue opinions and interpretations on behalf of the City.

May 2021

CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE

OPINION REGARDING JRFQ HOLDINGS, LLC'S PURCHASE OF CITY-OWNED PROPERTY AT
350 GRECO AND VICE MAYOR MENA'S ABILITY TO VOTE.

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“Principal by whom retained” means an individual or entity, other than an agency as defined in s. 112.312(2), that for compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one’s client, employer, subsidiary, or sibling organization of one’s client. Sec. 112.3143(1)(a), F.S.

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